

March 12, 2021

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO ADOPT AND AMEND VARIOUS REGULATION SECTIONS, ALONG WITH THE REPEAL OF A REGULATION SECTION, AND TO ADOPT A NEW FORM AND AMEND AN ASSOCIATED FORM, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

PROPOSED REPEAL OF THE FOLLOWING REGULATION SECTION:

- 1859.82

PROPOSED ADOPTION OF THE FOLLOWING REGULATION SECTIONS, INCLUDING A NEW COST ESTIMATE FORM:

- 1859.82, 1859.82.1, 1859.82.2 AND 1859.82.3
- *Facility Hardship Cost Estimate*, (New 05/20), referenced in Regulation Section 1859.2 and incorporated by reference.

PROPOSED AMENDMENTS TO THE FOLLOWING REGULATION SECTIONS, INCLUDING AN ASSOCIATED FORM:

- 1859.2, 1859.51, 1859.61, 1859.76, 1859.77.3, 1859.80, 1859.81, 1859.83, 1859.90.3, 1859.93 AND 1859.106
- *Application For Funding*, Form SAB 50-04, (Revised ~~04/18~~ 05/20), referenced in Regulation Section 1859.2 and incorporated by reference.

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt, amend and repeal the above-referenced regulation sections, and adopt and amend two associated forms, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

## AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to adopt, amend and repeal the above-referenced regulation sections under the authority provided by Sections 17070.35, 17072.13, 17075.15, 17078.72, 17078.64 and 17592.73 of the Education Code. The proposals interpret and make specific reference Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17052, 17070.15, 17070.35, 17070.50, 17070.51, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.25, 17071.75, 17071.76, 17072.10, 17072.12, 17072.13, 17072.14, 17072.15, 17072.18, 17072.20, 17072.30, 17072.32, 17072.33, 17072.35, 17073.15, 17073.25, 17074.10, 17074.15, 17074.16, 17074.25, 17074.30, 17075.10, 17075.15, 17076.10, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72, 17078.72(k), 17079, 17079.10, 17079.20, 17079.30, 17250.30, 17251, 17280, 42268, 42270, 56026, 100420, 100620, 100820, 101012, 101012(a)(1), 101012(a)(8) and 101122 of the Education Code; Section 53311, Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2014 and 1771.5, Labor Code.

## INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

At its May 27, 2020 meeting, the SAB adopted proposed regulations on an emergency basis. SFP Regulation Section 1859.82 combines both the Facility Hardship Program and Seismic Mitigation Program (SMP) together. This makes it difficult for applicants to navigate and clearly differentiate what information is needed for which program, thereby creating significant delays with processing the application(s) timely. The proposed regulations provide clarity to school districts applying to the programs and incorporate changes to the overall organization and structure of the regulation text, which improves user readability. In addition, the proposed regulations expand flexibility in program options, and increase funding for some areas of these programs, which would be in alignment with the cost estimates OPSC has received. In some instances, the proposed changes may limit funding opportunities by providing stricter accountability for State bond funds. The Office of Administrative Law approved the regulations as emergency regulations with an effective date of August 31, 2020.

### *Bond Funds Impacted*

- Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A)
- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)
- Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)
- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D) and
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

Attached to this Notice is the specific regulatory language of the proposed regulatory action and the adoption of a new cost estimate as well as amendments to an existing form. The proposed

regulations and forms can be reviewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulations and forms will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulations adopt, amend and repeal SFP Regulation sections under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

### *Background and Problem Being Resolved*

Under the Facility Hardship Program, projects can be repaired or replaced with new classrooms and related facilities and under the SMP, it's work to address deficiencies in buildings of the Most Vulnerable Category 2 Buildings (which is defined in SFP Regulation Section 1859.2) that may not perform well in the event of an earthquake. Both programs provide funding calculated based on the minimum work necessary to mitigate the health and safety issues.

The proposed regulations help to resolve the complex and complicated reading of SFP Regulation Section 1859.82 for the Facility Hardship Program and the SMP. School districts have commented about how cumbersome the Facility Hardship Program and the SMP is to navigate and it needs to be clearer not only in what constitutes an acceptable application submittal package but clarity in what the requirements are for each program and how funding is calculated.

The reorganization and restructure improve the clarity of both programs purposes as well as improve user readability. The Facility Hardship Program has been separated from the SMP in order to clearly delineate the requirements for each program such as program eligibility, application requirements, and funding calculations. The funding of health and safety projects is largely based on cost estimates calculated based on level of difficulty, complexity, timing, and numerous other factors. For equity across the State, the SAB uses the publication from Sierra West Publishing to determine the cost of the work. The current level of difficulty that OPSC funds health and safety projects is at "F2". One of the components of the proposed regulations increases funding from an F2 to an F3 level of difficulty, which appears more appropriate for the projects. OPSC has been noticing that many school districts have been struggling to ensure these health and safety projects are within the cost allowances that the programs have historically provided, and agrees that the F3 level is more in alignment with the required work and timing of these application types.

OPSC, on behalf of the SAB, conducted three stakeholder meetings to discuss and receive stakeholder input regarding the issues school districts were having when applying for Facility Hardship and SMP funding. The stakeholder meetings were conducted on January 10, 31 and February 7, 2020 in Sacramento, and were publicly noticed, transcribed and webcasted, with the information posted on OPSC's website.

The proposed regulations are a result of that collaboration with stakeholders and other interested parties.

OPSC performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, determined that there are no other regulations addressing K-12 health and safety issues of school facilities and that the SFP is the primary funding program at the State

level. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations and provide greater transparency to school districts. Proceeding with the implementation of the proposed regulations, along with the associated form and the new cost estimate form, will enhance applicants' awareness when partnering with the State while defining the responsibilities of funding applicant health and safety projects. This will ensure program oversight and expenditure accountability of State bond funds.

#### Anticipated Benefits of the Proposed Regulations

The proposed regulations promote a stricter accountability of State bond funds for health and safety projects, while streamlining processes that increase efficiencies for the programs. The proposed regulations also promote the State's general welfare, including protection of public health and safety, by increasing the State's infrastructure investment of school facilities. In addition, there are benefits to health, safety, and welfare of California residents (school children and school faculty) because school facilities will be built stronger and safer. School districts utilize construction and trades employees to work on school construction projects and although the proposed regulations do not directly impact worker's safety, existing law provides for the availability of a skilled labor force. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.

The proposed regulatory amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of these proposed regulations will have a positive impact on public health and safety at public K-12 schools by providing school districts with the opportunity to continue to submit applications in order to address health and safety issues while providing increased funding levels that are commensurate to these types of health and safety projects. These proposed regulatory amendments will result in a positive impact to the State's economy and has the potential of creating jobs.

#### Summary of the Proposed Regulatory Amendments

A summary of the proposed regulations are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed regulatory amendments 1) redefine "Facility Hardship" to include both replacement and rehabilitation projects, and adds School Buildings, components of School Buildings, and site conditions as projects that may be funded; 2) adds a new Form SAB 58-01, *Facility Hardship Cost Estimate*, which is incorporated by reference, to ensure consistency when funding projects by specifying that the cost estimate must use construction estimates from Sierra West Publishing and by clarifying soft costs eligible for funding; 3) defines "Portable Classroom Replacement Grant" as the initial per square foot grant for classroom area as of 2020 (beginning August 31, 2020 and this grant will be adjusted annually based on the Class B Construction Cost Index); 4) defines "Portable Toilet Replacement Grant" as the initial per square foot grant for toilet area as of 2020 (beginning August 31, 2020 and this grant will be adjusted annually based on the Class B Construction Cost Index); and 5) expands the definition of "Rehabilitation Cost" to provide 60 percent of the eligible costs verified on the new Form SAB 58-01.

Existing Regulation Section 1859.51 provides adjustment factors that increase or decrease a school district's baseline eligibility for new construction. The proposed regulatory amendments

provide the mechanism to adjust the new construction eligibility for an increase based on the number of pupils eligible for grants or by the capacity of buildings removed from K-12 classroom use as a result of an eligible Facility Hardship or an SMP project.

Existing Regulation Section 1859.61 provides adjustment factors that increase or decrease a school district's baseline eligibility for modernization. The proposed regulatory amendments provide the mechanism to adjust the modernization eligibility or remove buildings from a school district's classroom inventory so the buildings do not accumulate modernization eligibility as they are being replaced or permanently removed from K-12 classroom use as a result of an eligible Facility Hardship or an SMP project.

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. The proposed regulatory amendments update references to the newly restructured Facility Hardship and SMP regulation sections.

Existing Regulation Section 1859.77.3 sets forth the criteria and permissible uses of New Construction Grant funds in accordance with Education Code Section 17072.35 and other specified purposes, including multipurpose room, gymnasium, library (minimum essential facilities), and in addition, for Alternative Education schools, counseling offices and/or conference rooms. The proposed regulatory amendments update references to the newly restructured Facility Hardship Program regulation sections.

Existing Regulation Section 1859.80 stipulates what qualifies a school district to demonstrate for hardship assistance. The proposed regulatory amendments update the references to the newly restructured Facility Hardship and SMP regulation sections.

Existing Regulation Section 1859.81 permits school districts to qualify for Financial Hardship status in order to receive additional State funding for school facility projects, upon meeting specific financial criteria. The proposed regulatory amendments update the references to the newly restructured Facility Hardship and SMP regulation sections.

Existing Regulation Section 1859.82 establishes that the Facility Hardship and SMP only provides funding in cases of extraordinary circumstances that have caused an imminent health and safety threat. The proposed regulatory amendments repeal this regulation section in its entirety.

Proposed adoption of Regulation Section 1859.82 is restructured and reorganized by rewriting this section as an introduction to both the Facility Hardship and SMP while maintaining the provision that funding is provided only in cases of extraordinary circumstances that have caused an imminent health and safety threat.

Proposed adoption of Regulation Section 1859.82.1 informs school districts what a "School Building" means for purposes of the Facility Hardship Program. Other criteria include, but is not limited to 1) general factors generating program eligibility as well as placing new limits to program eligibility such as disallowing projects solely to replace components that have reached the end of their useful life, for performance of routine maintenance or repair, issues resulting from the deferment of routine maintenance or repair, lack of current code compliance, or the addition of components that were not previously existing; 2) code compliance costs triggered by eligible facility hardship projects may be included as part of the qualified application; 3) time limit on timeframe for application submission for completed projects; 4) specifies the application documents required to submit a complete Facility Hardship application for the replacement of

School Buildings, for School Buildings that are lost, destroyed, or unable to be repaired, and for School Buildings where the estimated cost to rehabilitate exceeds 50 percent of the cost to replace the building; 5) the required information that must be contained in the industry specialist's report/findings, and describes an industry specialist for clarity purposes; 6) for projects where the main health and safety threat is due to mold on the site, OPSC must conduct a site visit prior to the remediation of the mold in order to be eligible for funding; 7) the required information that must be contained in the governmental concurrence letter; 8) mandates and specifies the requirements for completing the standardized cost estimate (Form SAB 58-01) which will be used to evaluate the total cost to mitigate the health and safety threat through rehabilitation, and describes a licensed design professional for clarity purposes; 9) specifies that a cost/benefit analysis is required demonstrating that the cost to rehabilitate the affected structure exceeds 50 percent of the cost to replace the structure; 10) specifies all other documents required for an Approved Application are also required components for a complete Facility Hardship application; 11) specifies that any application submitted that does not contain all the required documentation will be returned without review; 12) specifies how eligible applications for Facility Hardship Program replacement projects will be funded; 13) specifies how eligible applications for Facility Hardship Program rehabilitation projects will be funded; 14) specifies funding offsets (i.e., where funds are received through an insurance claim, where the district has capacity to house their displaced pupils, or if funds are received by the disposition or sale of affected property) for applications receiving replacement or rehabilitation funding through the Facility Hardship Program; 15) specifies eligibility adjustments to a school district's SFP per-pupil grants as a result of funding received for a Facility Hardship project; 16) specifies criteria in which a Facility Hardship project may receive advance funding for site and/or design; 17) specifies the required documents that a school district would need to submit for a Facility Hardship application for advance funding for site and/or design; 18) specifies how eligible Facility Hardship applications will be funded requesting an advance design; 19) specifies how eligible Facility Hardship applications will be funded requesting advance site acquisition; 20) specifies deadlines for the submission of a complete full funding application for eligible Facility Hardship projects that received advance site and/or design funding; 21) specifies the reduction to eligible costs incurred for Facility Hardship projects that received site and/or design funding that do not meet required timelines; and 22) states that funding of any application in the section is offset by advance design or site funding previously provided.

Proposed adoption of Regulation Section 1859.82.2 informs school districts what a "School Building" means for purposes of the SMP. Other criteria include, but is not limited to 1) general factors generating program eligibility including limits to program eligibility; 2) specifies the criteria a project must meet in order to qualify as an SMP project; 3) specifies the application documents required to submit a complete SMP application for the replacement of School Buildings; 4) specifies the documents required to submit an SMP application for the replacement of School Buildings that have been lost, destroyed, or unable to be repaired, and describes a licensed design professional for clarity purposes; 5) specifies the documents required to submit an SMP application for the replacement of School Buildings with interior square footage to be mitigated; 6) specifies that any application submission that does not contain all required documentation will be returned without review; 7) specifies how eligible SMP replacement applications will be funded; 8) specifies that replacement funding may be used towards the rehabilitation of the affected facility provided that the underlying health and safety threat has been fully mitigated; 9) specifies the eligibility criteria and the documents required to submit an SMP application for the rehabilitation of School Buildings and exterior square footages of School Buildings, including lunch shelters, covered walkways, or site conditions; 10) specifies how eligible SMP rehabilitation applications will be funded; 11) specifies funding offsets for applications receiving replacement or rehabilitation funding under the SMP; 12)

specifies eligibility adjustments will be made to a school districts SFP per-pupil grants as a result of funding received for an SMP project; 13) specifies criteria in which an SMP project may receive advance funding for site and/or design and also sets forth the documents required to submit an SMP application for advance funding for site and/or design; 14) specifies how eligible SMP applications for advance design and/or site acquisition funding will be funded; 15) specifies deadlines for the submission of a complete full funding application for eligible SMP projects that receive advance site and/or design funding; 16) specifies the reduction to eligible costs incurred for SMP projects receiving advance site and/or design funding; and 17) specifies that the full funding received for eligible SMP projects will be offset by any advance funding previously received for the project(s).

Proposed adoption of Regulation Section 1859.82.3 allows for Facility Hardship and SMP conceptual approvals. This section specifies that school districts may request SAB approval to determine Facility Hardship or SMP eligibility in advance of project funding. The SAB approval does not represent a reservation of bond authority; it only confirms that the project meets the eligibility criteria for the Facility Hardship or the SMP. In addition, the conceptual approval does not provide priority processing once the request is received; the application will be processed in date order received regardless of any prior conceptual approval. Lastly, this section specifies the conceptual application submission requirements for potential Facility Hardship and SMP replacement or rehabilitation projects.

Existing Regulation Section 1859.83 provides an additional grant amount to the SFP new construction and modernization grants, as a result of unusual circumstances that created excessive project costs beyond the control of the school district. The proposed regulatory amendments update the references throughout this section for the new Facility Hardship and SMP regulation sections, as well as provides the mechanism for applying the supplemental grant [for Small Size Projects] to Facility Hardship Program replacement projects funded through the eligible Square Footage grant. In addition, minor wording changes have been made to grammatically improve the readability of the section.

Existing Regulation Section 1859.90.3 sets forth the programs that must participate in the priority funding process. The proposed regulatory amendments update the references throughout this section for the new Facility Hardship and SMP regulation sections.

Existing Regulation Section 1859.93 sets forth the funding order of received applications requesting modernization funding. The proposed regulatory amendments update the references throughout this section for the new Facility Hardship and SMP regulation sections.

Existing Regulation Section 1859.106 provides that expenditures for SFP program projects be made in accordance with certain Education Code sections and that adjustments be made to Facility Hardship and SMP grant amounts. The proposed regulatory amendments update the references throughout this section for the new Facility Hardship and SMP regulation sections.

Existing Form SAB 50-04 *Application for Funding*, (incorporated by reference) is submitted by school districts to apply for State funding for new construction and modernization projects. The proposed regulatory amendments incorporate the regulatory structure of the Facility Hardship and the SMP and clearly indicates the appropriate selections for use when submitting conceptual approvals and funding requests for these two programs.

Proposed adoption of Form SAB 58-01, *Facility Hardship Cost Estimate*, (incorporated by reference) provides instructions to school districts on the use of this Form. It is the standardized

form for the submission of rehabilitation cost estimates for the Facility Hardship and the SMP. This Form formalizes the calculation of grants provided for soft costs that a school district is eligible to request and will provide a consistent structure required by the two programs.

#### Prioritization of Facility Hardship Projects

Funding is provided for Facility Hardship projects, including SMP projects that replace or rehabilitate school facilities in critical cases where there is a serious risk to the health and safety of pupils. The SAB, at its August 4, 2010 meeting, approved placing Facility Hardship and SMP projects with unfunded approvals at the top of the cumulative Unfunded List (Lack of AB 55 Loans) at all times, with placement order determined by SAB approval date and next by date order received.

#### Statutory Authority and Implementation

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

#### Determination of Inconsistency or Incompatibility with Existing State Regulations

As noted above, the proposed regulations help to resolve the complex and complicated reading of SFP Regulation Section 1859.82 for the Facility Hardship Program and the SMP. School districts have commented about how cumbersome the Facility Hardship Program and the SMP is to navigate and it needs to be clearer not only in what constitutes an acceptable application submittal package but clarity in what the requirements are for each program and how funding is calculated.

The reorganization and restructure improve the clarity of both programs purposes as well as improve user readability. The Facility Hardship Program has been separated from the SMP in order to clearly delineate the requirements for each program such as program eligibility, application requirements, and funding calculations. The funding of health and safety projects is largely based on cost estimates calculated based on level of difficulty, complexity, timing, and numerous other factors. For equity across the State, the SAB uses the publication from Sierra West Publishing to determine the cost of the work. The current level of difficulty that OPSC funds health and safety projects is at "F2". One of the components of the proposed regulations increases funding from an F2 to an F3 level of difficulty, which appears more appropriate for the projects. OPSC has been noticing that many school districts have been struggling to ensure these health and safety projects are within the cost allowances that the programs have historically provided, and agrees that the F3 level is more in alignment with the required work and timing of these application types.



After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed regulations are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulations are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

#### Forms Incorporated by Reference

- *Application For Funding*, Form SAB 50-04, (Revised 04/18 05/20), referenced in Regulation Section 1859.2 and is incorporated by reference.
- *Facility Hardship Cost Estimate*, Form SAB 58-01, (New 05/20), referenced in Regulation Section 1859.2 and is incorporated by reference.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

##### Impact to Businesses and Jobs in California

The SFP is a \$42 billion voter-approved school facilities construction program. Under the SFP, the Facility Hardship Program and the SMP exist. The Facility Hardship Program has been separated from the SMP in order to clearly delineate the requirements for each program such as program eligibility, application requirements, and funding calculations. The funding of health and safety projects is largely based on cost estimates calculated based on level of difficulty, complexity, timing, and numerous other factors. For equity across the State, the SAB uses the publication from Sierra West Publishing to determine the cost of the work. The current level of

difficulty that OPSC funds health and safety projects is at “F2”. One of the components of the proposed regulations increases funding from an F2 to an F3 level of difficulty, which appears more appropriate for the projects. OPSC has been noticing that many school districts have been struggling to ensure these health and safety projects are within the cost allowances that the programs have historically provided, and agrees that the F3 level is more in alignment with the required work and timing of these application types. In making these statements, manufacturing and construction-related industries may be competing for construction jobs because of the demand on these industries. This is because the SFP consists of the New Construction and Modernization programs, which are the primary programs of the SFP, in addition to the Facility Hardship Program and SMP, for which applications are processed continually (on a monthly basis). Funds are released once the school districts submit the fund release form and associated grant agreement. It is anticipated that there will be a positive impact to the State’s economy and the potential for job creation.

Therefore, the proposed regulations will most likely have a positive effect on the State’s economy, creation of jobs, creation of new businesses, expansion of businesses, and will not eliminate jobs or eliminate existing businesses within California.

*Benefits to Public Health and Welfare, Worker’s Safety, and the State’s Environment*

- The proposed regulations promote the State’s general welfare, including protection of public health and safety, by increasing the State’s infrastructure investment of school facilities. In addition, the proposed regulations promote fairness by introducing new components and/or mechanisms that were not previously allowed under the Facility Hardship Program and the SMP.
- There are benefits to health, safety, and welfare of California residents (school children and school faculty) because school facilities will be built stronger and safer.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although these proposed regulations do not directly impact worker’s safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State’s environment from the proposed regulations.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.

**EFFECT ON SMALL BUSINESSES**

It has been determined that the proposed regulations will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulations only apply to school districts for purposes of funding school facility projects, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small businesses in these areas.

## SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OPSC no later than April 26, 2021, end of day. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction  
707 Third Street, 6<sup>th</sup> Floor  
West Sacramento, CA 95605

E-mail Address: [lisa.jones@dgs.ca.gov](mailto:lisa.jones@dgs.ca.gov)

Fax No.: (916) 375-6721

## AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

## ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

## SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

## RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, then scroll down to School Facility Program, Pending Regulatory Changes.

## ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The proposed regulations provide school districts with the opportunity to continue to submit applications in order to address health and safety issues by providing increased funding levels that are commensurate to these types of health and safety projects, as well as introducing new components and/or mechanisms that were not previously allowed under the Facility Hardship Program and the SMP.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.